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NO. 772

LINDSAY STRATHMORE IRRIGATION DISTRICT

VS.

MILO W. BEKINS AND REED J. BEKINS, AS TRUSTEES
APPOINTED BY THE WILL OF MARSH BEKINS, DECEASED,
ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF CALIFORNIA.

STATEMENT AS TO JURISDICTION

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IN THE
DISTRICT COURT OF THE UNITED STATES, SOUTHERN
DISTRICT OF CALIFORNIA, NORTHERN DIVISION

BANKRUPTCY.

No. 4575

IN THE MATTER OF THE PETITION OF LINDSAY-STRATHMORE
IRRIGATION DISTRICT, AN INSOLVENT TAXING AGENCY, FOR
CONFIRMATION OF A PLAN FOR THE COMPOSITION AND READ-
JUSTMENT OF ITS DEBTS.

**STATEMENT AS TO JURISDICTION OF THE
SUPREME COURT.**

(RULE 12.)

The appellant, Lindsay-Strathmore Irrigation District, upon the presentation of its petition for allowance of an appeal to the Supreme Court of the United States from the District Court of the United States for the Southern District of California, Northern Division, presents the following statement disclosing the basis upon which appellant contends that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment or decree from which the appeal is taken.

Nature of the Case and Ruling of the Court.

The appellant, Lindsay-Strathmore Irrigation District, an irrigation district organized and existing under the laws of the State of California, filed in the District Court of the United States for the Southern District of California, Northern Division, a petition for confirmation of a plan for the composition and readjustment of its debts, pursuant to the provisions of Chapter X of the Bankruptcy Act. An order approving the petition as properly filed under the provisions of the Act was made and entered. Thereafter, creditors of petitioner filed in the proceeding a motion to dismiss upon the ground, among others, set forth in said motion as follows:

“That this court is without jurisdiction to entertain the petitioner’s petition and the plan of readjustment filed therewith or to hear or determine this cause because this proceeding and the bankruptcy act under which this proceeding is brought, being Public No. 302, approved August 16th, 1937, is unconstitutional and void and affects the property rights of these respondents for the following reasons, to-wit:

“1. Under Section 8, Article I of the Constitution of the United States, Congress has power to pass uniform laws on the subject of bankruptcy throughout the United States, and said Act is not a uniform law on the subject of bankruptcy throughout the United States.

“2. That under said act private property may be taken for public use without just compensation, contrary to the provisions of Amendment V of the Constitution of the United States, and the petitioner’s petition and the plan of readjustment filed therewith propose to take respondents’ property without just compensation.

“3. That under the Constitution of the United States and the plan of government set forth therein, the Fed-

eral Government is a government of delegated powers, and no power has been delegated to Congress to pass legislation such as said Act of Congress, being Sections 81 to 84 inclusive, of the Bankruptcy Act of 1898, regulating the rights of citizens, and particularly these respondents, against the states or state governmental agencies in the manner therein provided.

"4. That said act was passed in violation of the reserved rights of states of the United States as guaranteed to the states by Article X of the Federal Constitution, and because the passage of said act is a violation of the rights of citizens, and particularly these respondents, guaranteed and reserved to them by Amendment X to the Constitution.

"5. Said act attempts to subject state governmental agencies to the jurisdiction of federal courts contrary to the plan and scheme of government, as set out in the Constitution of the United States.

"6. Said act in other respects violates the Constitution of the United States."

It appearing from such motion to dismiss that the constitutionality of an act of Congress affecting the public interest was drawn in question, the court having jurisdiction of this proceeding certified such fact to the Attorney General and entered an order permitting the United States to intervene and become a party for presentation of evidence and argument upon the question of the constitutionality of such Act. Thereafter the United States through its proper law officer, filed its appearance in the proceeding and appeared upon the hearing of the motion to dismiss and presented an argument in favor of the constitutionality of the statute.

The motion to dismiss was granted and judgment of dismissal, being the judgment appealed from, was entered solely upon the ground that the Act of Congress under which the proceedings were brought by petitioner was unconstitutional.

Statutory Provision Sustaining Jurisdiction.

“That whenever the constitutionality of any Act of Congress affecting the public interest is drawn in question in any court of the United States in any suit or proceeding to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, the court having jurisdiction of the suit or proceeding shall certify such fact to the Attorney General. In any such case the court shall permit the United States to intervene and become a party for presentation of evidence (if evidence is otherwise receivable in such suit or proceeding) and argument upon the question of the constitutionality of such Act. In any such suit or proceeding the United States shall, subject to the applicable provisions of law, have all the rights of a party and the liabilities of a party as to court cost to the extent necessary for a proper presentation of the facts and law relating to the constitutionality of such act.”

(Aug. 24, 1937, C. 754, Sec. 1, 50 Stats. Sec. 401, Title 28, U. S. C. A.)

“In any suit or proceeding in any court of the United States to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is a party, or in which the United States has intervened and become a party, and in which the decision is against the constitutionality of any Act of Congress, an appeal may be taken directly to the Supreme Court of the United States by the United States or any other party to such suit or proceeding upon application therefor or notice thereof within thirty days after the entry of a final or interlocutory judgment, decree, or order and in the event that any such appeal is taken, any appeal or cross-appeal by any party to the suit or proceeding taken previously, or taken within sixty days after notice of any special under this section, shall also be or be treated as taken

directly to the Supreme Court of the United States. In the event that an appeal is taken under this section, the record shall be made up and the case docketed in the Supreme Court of the United States within sixty days from the time such appeal is allowed, under such rules as may be prescribed by the proper courts. Appeals under this section shall be heard by the Supreme Court of the United States at the earliest possible time and shall take precedence over all other matters not of a like character. This section shall not be construed to be in derogation of any right of direct appeal to the Supreme Court of the United States under existing provisions of law."

(Aug. 24, 1937, C. 754, Sec. 2, 50 Stats. Sec. 349-a, Title 28 U. S. C. A.)

Statute of the United States the Validity of Which is Involved.

The statute of the United States the validity of which is involved is Chapter X of the Uniform Bankruptcy Act (Aug. 16, 1937, C. 657, 50 Stats. page 659, U. S. C. A. Title XI, Sec. 401-404), which statute reads as follows:

"AN ACT

TO AMEND AN ACT ENTITLED 'AN ACT TO ESTABLISH A UNIFORM SYSTEM OF BANKRUPTCY THROUGHOUT THE UNITED STATES', APPROVED JULY 1, 1898, AND ACTS AMENDATORY THEREOF AND SUPPLEMENTARY THERETO.

"BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of July 1, 1898, entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', as approved July 1, 1898, and Acts amendatory thereof and supplementary thereto be, and they are hereby, amended by adding thereto a new chapter, to be designated 'chapter **X**', to be and read as follows:

'CHAPTER X.

'Additional Jurisdiction.

'SEC. 81. This Act and proceedings thereunder are found and declared to be within the subject of bankruptcies and, in addition to the jurisdiction otherwise exercised, courts of bankruptcy shall exercise original jurisdiction as provided in this chapter for the composition of indebtedness of, or authorized by, any of the taxing agencies or instrumentalities hereinafter named, payable (a) out of assessments or taxes, or both, levies against and constituting liens upon property in any of said taxing agencies or instrumentalities, or (b) out of property acquired by foreclosure of any such assessments or taxes or both, or (c) out of income derived by such taxing agencies or instrumentalities from the sale of water or power or both, or (d) from any combination thereof; (1) Drainage, drainage and levee, levee, levee and drainage, reclamation, water, irrigation, or other similar districts, commonly designated as agricultural improvement districts or local improvement districts, organized or created for the purpose of constructing, improving, maintaining and operating certain improvements or projects devoted chiefly to the improvement of lands therein for agricultural purposes; or (2) local improvement districts such as sewer, paving, sanitary, or other similar districts, organized or created for the purposes designated by their respective names; or (3) local improvement districts such as road, highway, or other similar districts, organized or created for the purpose of grading, paving, or otherwise improving public streets, roads, or highways; or (4) public-school or public-school authorities organized or created for the purpose of constructing, maintaining and operating public schools or public-school facilities; or (5) local improvement districts such as port, navigation, or other similar districts, organized or created for the purpose of constructing, improving, maintaining, and operating ports and port facilities; or (6) any city, town, village, borough, township, or other municipality; *Provided*,

however, that if any provision of this chapter, or the application thereof to any such taxing agency or district or class thereof or to any circumstance, is held invalid, the remainder of the chapter, or the application of such provision to any other or different taxing agency or district or class thereof or to any other or different circumstances, shall not be affected by such holding.

'Definition.

'SEC. 82. The following terms as used in this chapter, unless a different meaning is plainly required by the context, shall be construed as follows:

'That the term "petitioner" shall include any taxing agency or instrumentality referred to in section 81 of this chapter.

'The term "security" shall include bonds, notes, judgments, claims, and demands, liquidated or unliquidated, and other evidences of indebtedness, either secured or unsecured, and certificates of beneficial interest in property.

'The term "creditor" means the holder of a security or securities.

'Any agency of the United States holding securities acquired pursuant to contract with any petitioner under this chapter shall be deemed a creditor in the amount of the full face value thereof.

'The term "security affected by the plan" means a security as to which the rights of its holder are proposed to be adjusted or modified materially by the consummation of a composition agreement.

'The singular number includes the plural and the masculine gender the feminine.

'Compositions.

'SEC. 83. (a) Any petitioner may file a petition hereunder stating that the petitioner is insolvent or unable to meet its debts as they mature and that it desires to effect a plan for the composition of its debts. The petition shall be filed with the court in whose territorial

jurisdiction the petitioner or the major part thereof is located, and, in the case of any unincorporated tax or special-assessment district having no officials of its own, the petition may be filed by its governing authority or the board or body having authority to levy taxes or assessments to meet the obligations to be affected by the plan of composition. The petition shall be accompanied by payment to the clerk of a filing fee of \$100, which shall be in lieu of the fees required to be collected by the clerk under other applicable chapters of the Uniform Bankruptcy Act of 1898, as amended. The petition shall state that a plan of composition has been prepared, is filed and submitted with the petition, and that creditors of the petitioner owning not less than 51 per centum in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner), have accepted it in writing. There shall be filed with the petition a list of all known creditors of the petitioner, together with their addresses so far as known to petitioner, and description of their respective securities showing separately those who have accepted the plan of composition, together with their separate addresses, the contents of which list shall not constitute admissions by the petitioner in a proceeding under this chapter or otherwise. Upon the filing of such a petition the judge shall enter an order either approving it as properly filed under this chapter, if satisfied that such petition complies with this chapter and has been filed in good faith, or dismissing it, if not so satisfied.

'The "plan of composition", within the meaning of this chapter, may include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through issuance of new securities of any character, or otherwise, and may contain such other provisions and agreements not inconsistent with this chapter as the parties may desire.

'No creditor shall be deemed to be affected by any plan of composition unless the same shall affect his in-

terest materially, and in case any controversy shall arise as to whether any creditor or class of creditors shall or shall not be affected, the issue shall be determined by the judge, after hearing, upon notice to the parties interested.

‘For all purposes of this chapter any creditor may act in person or by an attorney or a duly authorized agent or committee. Where any committee, organization, group, or individual shall assume to act for or on behalf of creditors, such committee, organization, group, or individual shall first file with the court in which the proceedings is pending a list of the creditors represented by such committee, organization, group, or individual, giving the name and address of each such creditor, together with a statement of the amount, class, and character of the security held by him, and attach thereto copies of the instrument or instruments in writing signed by the owners of the bonds showing their authority, and shall file with the list a copy of the contract or agreement entered into between such committee, organization, group, or individual and the creditors represented by it or them, which contract shall disclose all compensation to be received, directly or indirectly, by such committee, organization, group, or individual, which agreed compensation shall be subject to modification and approval by the court.

‘(b) Upon approving the petition as properly filed, or at any time thereafter, the judge shall enter an order fixing a time and place for a hearing on the petition, which shall be held within ninety days from the date of said order, and shall provide in the order that notice shall be given to creditors of the filing of the petition and its approval as being properly filed, and of the time and place for the hearing. The judge shall prescribe the form of the notice, which shall specify the manner in which claims and interests of creditors shall be filed or evidenced, on or before the date fixed for the hearing. The notice shall be published at least once a week for three successive weeks in at least one news-

paper of general circulation published within the jurisdiction of the court, and in such other paper or papers having a general circulation among bond dealers and bondholders as may be designated by the court, and the judge may require that it may be published in such other publication as he may deem proper. The judge shall require that a copy of the notice be mailed, postage prepaid, to each creditor of the petitioner named in the petition at the address of such creditor given in the petition, or, if no address is given in the petition for any creditor and the address of such creditor cannot with reasonable diligence be ascertained, then a copy of the notice shall be mailed, postage prepaid, to such creditor addressed to him as the judge may prescribe. All expense of giving notice as herein provided shall be paid by the petitioner. The notice shall be first published, and the mailing of copies thereof shall be completed at least sixty days before the date fixed for the hearing.

‘At any time not less than ten days prior to the time fixed for the hearing, any creditor of the petitioner affected by the plan may file an answer to the petition controverting any of the material allegations therein and setting up any objection he may have to the plan of composition. The judge may continue the hearing from time to time if the percentage of creditors required herein for the confirmation of the plan shall not have accepted the plan in writing, or if for any reason satisfactory to the judge the hearing is not completed on the date fixed therefor. At the hearing, or a continuance thereof, the judge shall decide the issues presented and unless the material allegations of the petition are sustained, shall dismiss the proceeding. If, however, the material allegations of the petition are sustained, the judge shall classify the creditors according to the nature of their respective claims and interests: *Provided, however,* That the holders of all claims, regardless of the manner in which they are evidenced, which are payable without preference out of funds derived from the same source or sources shall be of one class. The holders of claims for the payment of which

specific property or revenues are pledged, or which are otherwise given preference as provided by law, shall accordingly constitute a separate class or classes of creditors.

'At the hearing or a continuance thereof, the judge may refer any matters to a special master for consideration, the taking of testimony, and a report upon special issues, and may allow reasonable compensation for the services performed by such special master, and the actual and necessary expenses incurred in connection with the proceeding, including compensation for services rendered and expenses incurred in obtaining the deposit of securities and the preparation of the plan, whether such work may have been done by the petitioner or by committees or other representatives of creditors, and may allow reasonable compensation for the attorneys or agents of any of the foregoing, and may apportion the amount so determined among the parties to the proceeding as may be just; *Provided, however,* That no fees, compensation, reimbursement, or other allowances for attorneys, agents, committees, or other representatives of creditors shall be assessed against the petitioner or paid from any revenues, property, or funds of the petitioner except in the manner and in such sums, if any, as may be provided for in the plan of composition. An appeal may be taken from any order making such determination or award to the United States Circuit Court of Appeals for the circuit in which the proceeding under this chapter is pending, independently of other appeals which may be taken in the proceeding, and such appeal shall be heard summarily.

'On thirty days' notice by any creditor to petition, the judge, if he finds that the proceeding has not been prosecuted with reasonable diligence, or that it is unlikely that the plan will be accepted by said proportion of creditors, may dismiss the proceeding.

'(c) Upon entry of the order fixing the time for the hearing, or at any time thereafter, the judge may upon notice enjoin or stay, pending the determination of the

matter, the commencement or continuation of suits against the petitioner, or any officer or inhabitant thereof, on account of the securities affected by the plan, or to enforce any lien or to enforce the levy of taxes or assessments for the payment of obligations under any such securities, or any suit or process to levy upon or enforce against any property acquired by the petitioner through foreclosure of any such tax lien or special assessment lien, except where rights have become vested, and may enter an interlocutory decree providing that the plan shall be temporarily operative with respect to all securities affected thereby and that the payment of the principal or interest, or both, of such securities shall be temporarily postponed or extended or otherwise readjusted in the same manner and upon the same terms as if such plan had been finally confirmed and put into effect, and upon the entry of such decree the principal or interest, or both, of such securities which have otherwise become due, or which would otherwise become due, shall not be or become due or payable, and the payment of all such securities shall be postponed during the period in which such decree shall remain in force, but shall not, by any order or decree, in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the petitioner; or (b) any of the property or revenues of the petitioner necessary for essential governmental purposes; or (c) any income-producing property, unless the plan of composition so provides.

‘(d) The plan of composition shall not be confirmed until it has been accepted in writing, by or on behalf of creditors holding at least two-thirds of the aggregate amount of claims of all classes affected by such plan and which have been admitted by the petitioner or allowed by the judge, but excluding claims owned, held, or controlled by the petitioner; *Provided, however,* That it shall not be requisite to the confirmation of the plan that there be such acceptance by any creditor or class of creditors (a) whose claims are not affected by the plan; or (b) if the plan makes provision for the

payment of their claims in cash in full; or (c) if provision is made in the plan for the protection of the interests, claims, or lien of such creditors or class of creditors.

“(e) At the conclusion of the hearing, the judge shall make written findings of fact and his conclusions of law thereon, and shall enter an interlocutory decree confirming the plan if satisfied that (1) it is fair, equitable, and for the best interest of the creditors and does not discriminate unfairly in favor of any creditor or class of creditors; (2) complies with the provisions of this chapter; (3) has been accepted and approved as required by the provisions of subdivision (d) of this section; (4) all amounts to be paid by the petitioner for services or expenses incident to the composition have been fully disclosed and are reasonable; (5) the offer of the plan and its acceptance are in good faith; and (6) the petitioner is authorized by law to take all action necessary to be taken by it to carry out the plan. If not so satisfied, the judge shall enter an order dismissing the proceeding.

“Before a plan is confirmed, changes and modifications may be made therein, with the approval of the judge after hearing upon such notice to creditors as the judge may direct, subject to the right of any creditor who shall previously have accepted the plan to withdraw his acceptance, within a period to be fixed by the judge and after such notice as the judge may direct, if, in the opinion of the judge, the change or modification will be materially adverse to the interest of such creditor, and if any creditor having such right of withdrawal shall not withdraw within such period, he shall be deemed to have accepted the plan as changed or modified; *Provided, however,* That the plan as changed or modified shall comply with all the provisions of this chapter and shall have been accepted in writing by the petitioner. Either party may appeal from the interlocutory decree as in equity cases. In case said interlocutory decree shall prescribe a time within which any action is to be taken, the running of such time shall be

suspended in case of an appeal until final determination thereof. In case said decree is affirmed, the judge may grant such time as he may deem proper for the taking of such action.

‘(f) If an interlocutory decree confirming the plan is entered as herein provided, the plan and said decree of confirmation shall become and be binding upon all creditors affected by the plan, if within the time prescribed in the interlocutory decree, or such additional time as the judge may allow, the money, securities, or other consideration to be delivered to the creditors under the terms of the plan shall have been deposited with the court or such disbursing agent as the court may appoint or shall otherwise be made available for the creditors. And thereupon the court shall enter a final decree determining that the petitioner has made available for the creditors affected by the plan the consideration provided for therein and is discharged from all debts and liabilities dealt with in the plan except as provided therein, and that the plan is binding upon all creditors affected by it, whether secured or unsecured, and whether or not their claims have been filed or evidenced, and if filed or evidenced, whether or not allowed, including creditors who have not, as well as those who have, accepted it.

‘(g) A certified copy of the final decree, or of any other decree or order entered by the court or the judge thereof, in a proceeding under this chapter, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the decree or order was made. A certified copy of an order providing for the transfer of any property dealt with by the plan shall be evidence of the transfer of title accordingly and, if recorded as conveyances are recorded, shall impart the same notice that a deed, if recorded, would impart.

‘(h) This chapter shall not be construed as to modify or repeal any prior, existing statute relating to the refinancing or readjustment of indebtedness of municipi-

palities, political subdivisions, or districts: *Provided, however,* That the initiation of proceedings or the filing of a petition under Section 80 shall not constitute a bar to the same taxing agency or instrumentality initiating a new proceeding under section 81 thereof.

'(i) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor.

'Termination of Jurisdiction.

'Sec. 84. Jurisdiction conferred on any court by section 81 shall not be exercised by such court after June 30, 1940, except in respect of any proceeding initiated by filing a petition under section 83 (a) on or prior to June 30, 1940.'

Passed the House of Representatives June 24, 1937.

Attest:

SOUTH TRIMBLE,
Clerk."

Date of the Judgment or Decree Sought to be Reviewed and of Presentation of Application for Appeal.

The judgment of dismissal was dated December 2, 1937, and entered December 2nd, 1937, and the date upon which the application for appeal is presented is December 13th, 1937.

Questions Involved are Substantial.

The validity of the statute which is here involved, Chapter X of the Bankruptcy Act, has never been determined by the Supreme Court of the United States. Its decision in *Ashton v. Cameron County Water District No. 1*, 298 U. S. 513, 80 L. Ed. 1309, is not determinative of the con-

stitutionality of the act of Congress here in question for the reasons that:

1. In the *Ashton* case the court had before it an act of Congress, Chapter IX of the Bankruptcy Act, which by its express terms was limited in its operation to political subdivisions only; that is, instrumentalities created for some governmental purposes.

In re Imperial Irrigation District, 87 F. (2d) 355,

whereas Chapter X can operate upon and may be taken advantage of by any of the taxing agencies or instrumentalities included within the six separate classes mentioned (Section 81) in each of which classes some or all of the agencies may or may not, depending upon the different facts in each separate case, be political subdivisions, or execute governmental powers or functions. The constitutionality of Chapter X should be examined by the Supreme Court in the light of the avowed purpose of Congress, as disclosed by the committee reports and explanations in Congress, to avoid the constitutional infirmities of Chapter IX as announced in the *Ashton* case.

Wright v. Vinton Branch, etc., 300 U. S. 440, 81 L. Ed. 487.

2. The intent of the Congress, that the constitutionality of the act be determined in its application to each particular case, is plainly indicated by the severability clause contained in Chapter X (Section 81). Although Chapter IX of the Bankruptcy Act contains (Section 80-1) a severability clause, the fact that the operation of Chapter IX is limited to political subdivisions precluded the Supreme Court of the United States from considering, in its determination of the *Ashton* case, any question of fact from which the attributes and character of the petitioner or the indebtedness there involved could be determined and distinguished.

from instrumentalities possessed of other or different attributes or from indebtedness of other or different character. Such a question would have been moot because political subdivisions necessarily exercise governmental functions.

The intention of Congress to separate the applications of the act, Chapter X, is plain.

National Labor Relations Board v. Jones Laughlin Steel Corp. (1937), 301 U. S. 1, 81 L. Ed. (Adv.) 563;
Williams v. Standard Oil Co. (1929), 278 U. S. 235, 73 L. Ed. 287.

Opinion and Judgment.

A copy of the opinion delivered upon the rendering of the judgment sought to be reviewed and showing the grounds of the judgment is appended hereto.* A copy of the judgment of dismissal is likewise appended.* Said judgment allowed an exception to the petitioner and to the intervenor.

LINDSAY-STRATHMORE IRRIGATION DISTRICT,
By JAS. R. McBRIDE,
GUY KNUFF,
MITCHELL, SILBERBERG, ROTH & KNUFF,
By GUY KNUFF,
Attorneys for Petitioner and Appellant,
Lindsay-Strathmore Irrigation District.

* The opinion and judgment of dismissal of the District Court of the United States for the Southern District of California will be found printed as appendices to the Statement as to Jurisdiction in the case of *U. S. v. Bekins et al.*, No. 757, October Term, 1937.